

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED BY: [Signature]
03 MAR -5 PM 3:17
CLARENCE J. BOOK
CLERK U.S. DIST. CT.
S.D. OF FLA.

WINSTON JOHNSON,
Plaintiff,

03-20488
CASE NO:

v.

CIV-GRAHAM

BARNES & NOBLE BOOKSELLERS, INC., COMPLAINT
and MCROBERTS PROTECTIVE AGENCY, INC.

Defendant.

**MAGISTRATE JUDGE
GARBER**

_____/

Plaintiff, WINSTON JOHNSON, by and through undersigned counsel, sues
Defendants BARNES & NOBLE BOOKSELLERS, INC., and MCROBERTS
PROTECTIVE AGENCY, INC. and states and alleges as follows:

JURISDICTION AND VENUE

1. This suit is brought and jurisdiction lies pursuant to The Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1988, 2000(e), diversity pursuant to 28 U.S.C. § 1332, and supplemental claims jurisdiction of state counts pursuant to 28 U.S.C. § 1367.
2. Plaintiff, WINSTON JOHNSON (hereinafter referred to as "JOHNSON"), is a Black man and a citizen of the United States, and the State of Florida, who resides in Miami-Dade County, Florida.

[Signature]

-
3. Defendant, BARNES & NOBLE BOOKSELLERS, INC. (hereinafter referred to as "B & N") is a Delaware corporation, doing business in Miami Dade County, Florida.
 4. Defendant, MCROBERTS PROTECTIVE AGENCY, INC. (hereinafter referred to as "McROBERTS") is a New York corporation, doing business in Miami Dade County, Florida.
 5. The amount in controversy in this action exceeds \$ 75,000, exclusive of interest and costs.
 6. All acts or omissions of employees of B & N and McROBERTS were committed in their role as an agent or employee in the course of their employment with their respective employer.

STATEMENT OF FACTS

7. On December 16, 2001, JOHNSON went to the Barnes and Noble Booksellers store located at 12405 N. Kendall Drive, Miami Florida, 33186, owned and operated by Defendant B & N.
8. JOHNSON has frequented this location of Defendant B & N several times on previous occasions and he was going to the store on this occasion to pick up a compact disk that he had previously ordered, to look for a book for a class that he was taking and to meet a co-worker.
9. While at the store, JOHNSON was looking for a book, St. Augustine City of God, and had trouble finding it, so he asked an employee of B & N for assistance.

10. She retrieved a printout with the book on it and began to look for the book. We were about ten feet off the main aisle and in plain sight of everyone in the store. While she was bent over, looking for the book, JOHNSON noticed that she was grasping for her overshirt in order to tuck it in for some time. So, JOHNSON took the end of her overshirt and he put it in her hand. JOHNSON did not touch any part of her body except for her hand. She said "thank you", smiled, gave him his book and then walked away.
11. JOHNSON went back to his co-worker and headed off to another section of the store, when within five minutes JOHNSON was approached by the manager, assistant manager of B & N and a security guard employed by McROBERTS.
12. The manager asked JOHNSON if he touched one of his employees. He called up the clerk who was assisting JOHNSON and asked her if JOHNSON touched her. She stated that "He touched my butt." JOHNSON was thoroughly embarrassed at the time and the manager, assistant manager, and the McROBERTS security officer ordered JOHNSON into the store's office despite JOHNSON protests and against his will.
13. The McROBERTS security guard led him through the store and the manager went behind JOHNSON to ensure that JOHNSON would follow them.
14. In the office, manager, assistant manager, and the McROBERTS security officer closed the door. The manager stood at the door, the assistant manager stood at the desk and the security guard stood in the corner of the room. The

assistant manager interrogated JOHNSON and stated, accused JOHNSON of lying and stated that the police was going to sort this out.

15. While the police came and spoke with the manager, assistant manager and clerk, the McROBERTS security guard requested that JOHNSON give him my ID and drivers license because the police would need it.
16. The McROBERTS security guard stated that issues like what occurred in my case are innocent enough, **but the standards are different for me, as a Black man, than someone else.**
17. At that time, the McROBERTS security guard took my picture and tried to get JOHNSON to sign a trespass order, attached hereto as Exhibit "A". JOHNSON refused to do so.
18. The Defendants intentionally detained the plaintiff for an unreasonable amount of time without the plaintiff's consent. The plaintiff was not free to leave.
19. The Miami-Dade police officer came into the office at that time. The police officer said, "Let me tell you something, if it were my girlfriend, I would beat the Black shit out of you." When JOHNSON tried to talk, he told JOHNSON that he did not need an excuse and he was through with JOHNSON and that JOHNSON was a "piece of shit". Then he told JOHNSON that if he were to go into another Barnes & Noble, JOHNSON would be arrested for trespass. After being chastised by the police officer, JOHNSON was permitted to leave the premises.

20. JOHNSON was never arrested, nor were any charges brought against JOHNSON.

21. As a result if the forcible restraint, detention, and false accusation, the plaintiff suffered severe emotional distress, extreme mental anguish, personal humiliation, and physical discomfort.

COUNT I – VIOLATION OF 42 U.S.C. § 1981

22. Plaintiff JOHNSON realleges and reincorporates the allegations in paragraphs 1 through 21, as if stated herein.

23. Section 1981 assures that All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens. The term make and enforce contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.

24. Defendants B & N and McROBERTS interfered with JOHNSON's contractual relationship with B & N by refusing to allow him to complete his transaction of purchasing the City of God, and by refusing to permit him from entering into further contractual relations with B & N by issuing a "trespass order" which subjects him for arrest if he attempts to patronize any store in the State of Florida.

25. JOHNSON's race was the motivating factor in Defendants' conduct as standards are different for Black men than White persons at B & N stores.

26. Upon information and belief, B & N and McROBERTS uses trespass order forms and photographs to systematically deprive Black persons of their right to contract with B & N.

27. JOHNSON is entitled to reasonable attorney's fees, including litigation expenses, and other costs in this action.

WHEREFORE, Plaintiff WINSTON JOHNSON demands judgment against Defendants BARNES & NOBLE BOOKSELLERS, INC., and MCROBERTS PROTECTIVE AGENCY, INC. for compensatory damages, including future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, punitive damages, interest, and attorney's fees and litigation costs, to enjoin Defendants BARNES & NOBLE BOOKSELLERS, INC., and MCROBERTS PROTECTIVE AGENCY, INC. from any further discriminatory acts, and grant such other and further relief as this Court deems just and equitable.

COUNT II – FALSE IMPRISONMENT

28. Plaintiff JOHNSON realleges and reincorporates the allegations in paragraphs 1 through 21, as if stated herein.

29. The manager and assistant manager of B & N and a security guard employed by McROBERTS unlawfully detained JOHNSON, led him into the offices at the store, held him there, against his will, for two hours.

30. Such detention and imprisonment was unreasonable, unlawful and not warranted under the circumstances.

31. Defendants intended to cause JOHNSON's confinement.

JOHNSON v. BARNES & NOBLES.

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32. Defendants actions against JOHNSON were malicious as such detention was without reasonable cause and in reckless disregard for JOHNSON's rights.

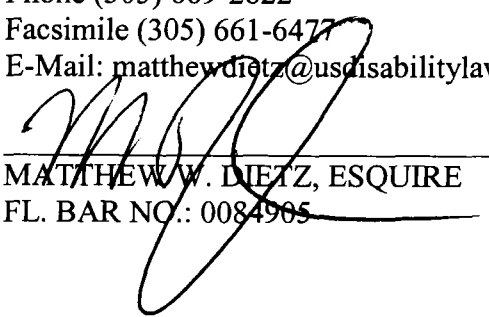
33. JOHNSON is entitled to reasonable attorney's fees, including litigation expenses, and other costs in this action.

WHEREFORE, Plaintiff WINSTON JOHNSON demands judgment against Defendants BARNES & NOBLE BOOKSELLERS, INC., and MCROBERTS PROTECTIVE AGENCY, INC. for compensatory damages, including future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, punitive damages, interest, and attorney's fees and litigation costs, to enjoin Defendants BARNES & NOBLE BOOKSELLERS, INC., and MCROBERTS PROTECTIVE AGENCY, INC. from any further discriminatory acts, and grant such other and further relief as this Court deems just and equitable.

THE PLAINTIFF DEMANDS A JURY TRIAL FOR ALL ISSUES SO TRIABLE.

Dated this 5 day of ^{March}~~February~~, 2003.

LAW OFFICES OF MATTHEW W. DIETZ, P.L.
1320 South Dixie Highway, PH 1275
Coral Gables, Florida 33146
Phone (305) 669-2822
Facsimile (305) 661-6477
E-Mail: matthewdietz@usdisabilitylaw.com


MATTHEW W. DIETZ, ESQUIRE
FL. BAR NO.: 0084965



McRoberts Protective Agency, Inc.

Setting The Standard in Security Since 1876

TRESPASS NOTICE

Defendant's Name: Winston Johnson Date: 12 / 16 / 01
 Defendant's Address 18825 S.W. 19th Ave. Apt. #
Miami Fla 33187
 City State Zip Code

I, Winston Johnson, understand that my privilege to enter all **Barnes and Noble Book Stores** is revoked in the state of Florida. If I re-enter any of these stores, I will be arrested for the crime of trespassing.

Signature [Signature] Date 12 / 16 / 01, Sun.
 Witness [Signature] Date 12 / 16 / 01, Sun.
 If Juvenile, Parent or Legal Guardian _____
 Print Last Name Print First Name

Legal Guardian or Other [Signature]
 Signature

Relationship to Juvenile N/A

Identification Shown Driver License # J525-880-61-410-0

Police Officer Name Det. Delatorres

Police Officer
 Or Store Detective Signature [Signature]

Badge # (Police Officer) 4528

TO BE COMPLETED BY BARNES & NOBLE

The above named individual was given this trespass notice after he/she was observed engaging in illegal conduct in the store located at 12405 S.W. 8th St. Miami, Fla. 33186
 Store Address Store # 2792

(Specifically), (Describe defendant's conduct, e.g. defendant was shoplifting merchandise).

JS-44
(Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings of both parties as required by law, except as provided by local rules of this court. This form, approved by the Judicial Conference of the United States in September 1974 is required for the use by the Clerk of Court the purpose of initiating a civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE SIDE OF THE FORM.)

I.(a) PLAINTIFFS

WINSTON JOHNSON

DEFENDANTS

BARNES & NOBLE BOOKSELLER, INC., and MICROBES'S PROTECTIVE ASSOCIATION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Miami-Dade County
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT MAGISTRATE JUDGE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

Matthew W. Dietz, Esq., Law Offices of Matthew W. Dietz, P.L. 0000 03 - 20488 CIVIL
1320 S. Dixie Hwy, PH 1275, Coral Gables, Florida 33146. Tel: (305) 669-2822

ATTORNEYS (IF KNOWN)

(d) CIRCLE OF COUNTY WHERE ACTION AROSE DADE BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question
(U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)III. CITIZENSHIP OF PRINCIPLE PARTIES
(For Diversity Cases Only)

(For Diversity Cases Only)

Citizen of This State

PTF

DEF

☒ 1☐ 1Incorporated or Principal Place
Of Business in This State

Citizen of Another State

☐ 2☐ 2Incorporated or Principal Place
Of Business in Another State

Citizen or Subject of a Foreign Country

☐ 3☐ 3

Foreign Nation

IV. ORIGIN

☒ 1 Original Proceeding☐ 2 Removed from State
Court☐ 3 Remanded from
Appellate Court

(PLACE AN "X" IN ONE BOX ONLY)

☐ 4 Reinstated or
Reopened☐ 5 Transferred from
another district (specify)☐ 6 Multidistrict litigation☐ 7 Appeal to District
Judge from Magistrate
JudgmentV. NATURE OF SUIT
(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (135f) <input type="checkbox"/> 862 Black Lung <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 871 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organization <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 810 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A or B
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Products Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEUS CORPUS <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

42 U.S.C. § 1981, 28 U.S.C. § 1332, and 28 U.S.C. § 1367. This is a civil rights and false imprisonment claims against entities incorporated in another state.

LENGTH OF TRIAL

via 4 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

Demand \$ 75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

\$150.00

APPLYING IFP

JUDGE

MAG. JUDGE

878372

03/05/03